

IC 14-33-2

Chapter 2. Establishment

IC 14-33-2-1

Filing petition

Sec. 1. Freeholders who desire the establishment of a district must initiate proceedings by filing a petition in the office of the clerk of the circuit court with jurisdiction in the county containing the most land within the proposed district.

As added by P.L.1-1995, SEC.26.

IC 14-33-2-2

Minimum number of freeholders signing petition

Sec. 2. A petition filed under section 1 of this chapter must be signed by freeholders owning land in the proposed district in the minimum number or proportion of all the freeholders in the proposed district as follows:

- (1) Districts of not more than one thousand (1,000) freeholds, thirty percent (30%) of the freeholders.
- (2) Districts of at least one thousand one (1,001) and not more than five thousand (5,000) freeholds, fifteen percent (15%) of the freeholders but not less than three hundred (300) signatures.
- (3) Districts of at least five thousand one (5,001) and not more than twenty-five thousand (25,000) freeholds, ten percent (10%) of the freeholders but not less than seven hundred fifty (750) signatures.
- (4) Districts of at least twenty-five thousand one (25,001) freeholds, five percent (5%) of the freeholders but not less than two thousand five hundred (2,500) signatures.

As added by P.L.1-1995, SEC.26.

IC 14-33-2-3

Number of freeholds in district; number of freeholders qualified to sign petition

Sec. 3. To determine the number of freeholds in the proposed district and the number or proportion of freeholders owning land in the district qualified to sign a petition for establishment, the following apply:

- (1) Only one (1) freeholder's signature may be counted for any one (1) freehold. If a freehold is held in joint title, only one (1) freeholder's signature may be counted and it may be the signature of any one (1) of the freeholders owning the freehold in joint title. If a given freeholder qualifies as set forth in this section for at least two (2) freeholds, the freeholder's signature shall be counted for each freehold.
- (2) One (1) or more tracts of land owned solely by only one (1) freeholder constitute one (1) freehold.
- (3) One (1) or more tracts of land owned in joint title by at least two (2) identical freeholders constitute one (1) freehold. However, if one (1) of the freeholders owning the freehold in joint

title is a different or additional person, each freehold in joint title among nonidentical persons constitutes a separate and additional freehold.

(4) Subject to subdivisions (1), (2), and (3), if:

(A) a petition for the establishment of a district is filed by a municipality by ordinance adopted by the municipality's legislative body; or

(B) the municipality by ordinance has joined in a petition for inclusion in whole or part in the proposed district;

each freeholder in the area of the municipality that is in the proposed district is counted as a signatory to the petition. However, if a freeholder in the area of the municipality that is in the proposed district, after the filing of the petition for the establishment of the district, files a petition against the establishment of the proposed district, the number of freeholders considered and counted as signatories to the petition must be reduced by the number of freeholders in the area of the city that is in the proposed district filing a petition against the establishment of the district.

(5) Private corporations owning land in the proposed district may sign the petition by any officer authorized by the corporation. The officer's signature is prima facie evidence of the officer's authorization to sign the petition.

As added by P.L.1-1995, SEC.26.

IC 14-33-2-4

Contents of petition

Sec. 4. A petition must contain the following:

(1) The name for the proposed district, which should be in the form of "_____ Conservancy District".

(2) A description of the territory to be included, not necessarily by metes and bounds, but sufficiently accurate to inform the court and apprise the landowners of the possibility of the inclusion of their land in the district.

(3) A statement of each specific purpose for which the district is to be established.

(4) A statement of the necessity of accomplishing each purpose.

(5) A statement that the creation of the district will be conducive to the public health, safety, or welfare.

(6) A statement that the costs and damages of and to be paid solely by the district will probably be less than the benefits received in the district. If the purpose is declared to be water supply or sewage disposal, this statement need not be included.

(7) Whether the petition is conditioned upon a grant of federal or state money, or both, identifying the money upon which the petition is conditioned.

(8) Whether conditions attached to federal or state aid, or both, are acceptable if the federal or state government, or both, offer a grant of money.

(9) Whether maintenance and operation of the works of improvement necessary to accomplish any or all of the purposes

will be paid for:

- (A) solely by annual levy of the special benefits tax;
- (B) by both annual levy of the special benefits tax and an annual assessment on land found to be exceptionally benefited if exceptional benefits are expected to exist; or
- (C) by use of any other method provided by statute as long as the proportion between the tax and assessment is in approximately the same ratio as used to pay the cost of establishing the district and placing the district plan into operation.

(10) The number of directors to serve on the board, which must be three (3), five (5), seven (7), or nine (9).

(11) A statement of the division of the proposed district into areas, which must be equal in number to the number of directors.

As added by P.L.1-1995, SEC.26.

IC 14-33-2-5

Motion for dismissal of petition

Sec. 5. If:

- (1) a petition is conditioned upon a promise of federal money; and
- (2) the responsible federal agency informs the court that federal money is not available for the district as proposed by the petition or amendments to the petition;

the petitioners may move that the petition be dismissed. The court shall grant the motion.

As added by P.L.1-1995, SEC.26.

IC 14-33-2-6

Petition in several counterparts

Sec. 6. A petition may be circulated in several counterparts and still constitute a single petition.

As added by P.L.1-1995, SEC.26.

IC 14-33-2-7

Petition by municipality

Sec. 7. A municipality (as defined in IC 36-1-2) may file a petition to initiate a proposed district by ordinance adopted by the legislative body (as defined in IC 36-1-2). The proposed district may include land:

- (1) solely inside the municipality; or
- (2) partially inside and partially outside the municipality.

As added by P.L.1-1995, SEC.26.

IC 14-33-2-8

Bond

Sec. 8. (a) The petitioners must post a bond sufficient to pay the cost of notice and all legal costs of the court connected with the proceedings in case the court refuses to establish the district and dismisses the petition.

(b) The petitioners shall pay the cost of notice and all legal costs if the court dismisses the petition.

As added by P.L.1-1995, SEC.26.

IC 14-33-2-9

Jurisdiction

Sec. 9. The circuit court with jurisdiction in the county having the most land in the proposed district has exclusive jurisdiction over the establishment of the district. If the district is established, this court also has exclusive jurisdiction over all further hearings in connection with the district.

As added by P.L.1-1995, SEC.26.

IC 14-33-2-10

Transfer to court having jurisdiction

Sec. 10. (a) A court in which a petition is filed shall order the proceedings transferred to the court having jurisdiction under section 9 of this chapter if:

- (1) the petition was filed in the wrong court by mistake; or
- (2) the petition is amended so that another county has more land in the proposed district.

(b) The court that establishes a district retains jurisdiction over the district regardless of a change in area of the district that results from later proceedings.

As added by P.L.1-1995, SEC.26.

IC 14-33-2-11

Docket; hearing date

Sec. 11. Upon receipt of a petition for the establishment of a district, the court shall docket the petition as a civil case and set a date for hearing. The court shall give priority to the hearing in determining the date, but the court must allow at least thirty (30) days for interested persons to receive notice.

As added by P.L.1-1995, SEC.26.

IC 14-33-2-12

Notice of hearing on petition

Sec. 12. The petitioners shall give notice of hearing on the petition as follows:

(1) By publication in two (2) newspapers of general circulation in each county having land in the proposed district, three (3) times at successive weekly intervals. The first publication must be at least thirty (30) days before the date of the hearing. If there is only one (1) newspaper of general circulation in a county, three (3) publications in that newspaper are sufficient.

(2) By mailing a copy of the notice at least twenty (20) days before the date of the hearing, first class postage prepaid, to each freeholder who has not signed the petition and who owns land in the proposed district, according to the records of the county auditor. The person having the notice mailed shall file an affidavit with the court showing the following:

- (A) The names of the persons to whom notice was sent.
- (B) The address to which the notice was sent.
- (C) The date on which the notice was mailed.

As added by P.L.1-1995, SEC.26.

IC 14-33-2-13

Notice of further proceedings

Sec. 13. Notice of the hearing on a petition serves as notice of all further proceedings in connection with the district.

As added by P.L.1-1995, SEC.26.

IC 14-33-2-14

Notice of hearing; contents

Sec. 14. The notice of the hearing on the petition, in addition to all other requirements, must contain the following:

- (1) A statement that a petition for a district is before the court.
- (2) A statement of each purpose for which the district is proposed.
- (3) A statement as to which municipalities, townships, and counties the area of the proposed district lies within, in whole or in part.
- (4) The place of the hearing.
- (5) The date of the hearing.

As added by P.L.1-1995, SEC.26.

IC 14-33-2-15

Petition against establishment of a district

Sec. 15. (a) A petition against the establishment of a district may be presented to the court:

- (1) at the hearing on a petition; or
- (2) at any time thereafter before the fifth day before the hearing day initially ordered by the court after the receipt of the commission's report.

(b) If the court finds a petition against the establishment of a district contains the signatures of:

- (1) at least fifty-one percent (51%) of the freeholders in the proposed district; or
- (2) the freeholders who own at least sixty-six and two-thirds percent (66 2/3%) as determined by the assessed valuation of the real property in the proposed district;

the court shall dismiss the petition for the establishment of the district.

(c) Sections 3 and 6 of this chapter apply to this section.

(d) The fifth day before the hearing date initially ordered by the court after the receipt of the commission's report is the last date on which a petition to withdraw signatures may be filed.

As added by P.L.1-1995, SEC.26.

IC 14-33-2-16

Petition requirements and conformity

Sec. 16. (a) At the hearing on a petition for the establishment of a district, the court shall determine whether the petition:

- (1) bears the necessary signatures; and
- (2) complies with the requirements as to form and content.

(b) The court may not dismiss a petition with the requisite signatures because of alleged defects without permitting, in this or subsequent proceedings, amendments to correct errors in form or content. The court shall hear any interested person on the question.

(c) The following are prima facie evidence concerning the requirements for signatures on a petition:

(1) Verified certification, based on personal knowledge or information and belief, by:

(A) the persons who carried the petition; or

(B) other persons knowing the facts as to the identity of the persons signing the petition and as to the ownership by those persons of land within the proposed district.

(2) The records of the county auditor or county treasurer.

(d) The determination of:

(1) the number of freeholds; and

(2) the necessary number and identity of freeholders;

shall be made as of the date of filing a petition. If the petition as of that date bears the necessary number of signatures, the petition may not be dismissed because petitioners withdraw signatures that reduces the number of signatures below the required amount unless the withdrawals constitute more than fifty percent (50%) of the signers as of the date of filing.

As added by P.L.1-1995, SEC.26.

IC 14-33-2-17

Commission's determination and report

Sec. 17. (a) This section applies to all districts, except for districts described in section 18 of this chapter.

(b) If the court determines that a petition conforms to the requirements, the court shall enter an order referring the petition to the commission.

(c) The commission shall make a determination and report to the court whether the proposed district meets the following conditions:

(1) The proposed district appears to be necessary.

(2) The proposed district holds promise of economic and engineering feasibility.

(3) The proposed district seems to offer benefits in excess of costs and damages for purposes other than the following:

(A) Water supply.

(B) Storage of water for augmentation of stream flow.

(C) Sewage disposal.

(4) Whether the public health will be served immediately or prospectively by the establishment of the district for any of the following purposes:

(A) Water supply.

(B) Sewage disposal.

(C) Storage of water for augmentation of stream flow.

(D) Any combination of these purposes.

(5) The proposed district proposes to cover and serve a proper area.

(6) The proposed district could be established and operated in a manner compatible with established:

(A) conservancy districts;

(B) flood control projects;

(C) reservoirs;

- (D) lakes;
- (E) drains;
- (F) levees; and
- (G) other water management or water supply projects.

(d) The fact that all the land included in the proposed district is owned by one (1) freeholder or a limited number of freeholders is not a sufficient reason for the commission or the court to make unfavorable findings on:

- (1) the question of the establishment of the district; and
- (2) later, if the district is established, the approval of the district plan.

However, it must appear from the evidence that the land is subdivided or intended for subdivision and development and that the accomplishment of the purposes proposed and in the manner proposed would be necessary and desirable for the person acquiring and using the land after subdivision and development.

As added by P.L.1-1995, SEC.26.

IC 14-33-2-18

Commission's determination and report for certain counties

Sec. 18. (a) This section applies only to a district to be located in a county having a population of more than one hundred thousand (100,000) but less than one hundred five thousand (105,000).

(b) If the court determines that a petition conforms to the requirements, the court shall enter an order referring the petition to the commission.

(c) The commission shall make a determination and report to the court whether the proposed district should be established after determining whether the proposed district meets the following conditions:

- (1) The proposed district appears to be necessary.
- (2) The proposed district holds promise of economic and engineering feasibility.
- (3) The proposed district seems to offer benefits in excess of costs and damages for purposes other than the following:
 - (A) Water supply.
 - (B) Storage of water for augmentation of stream flow.
 - (C) Sewage disposal.
- (4) Whether the public health will be served immediately or prospectively by the establishment of the district for any of the following purposes:
 - (A) Water supply.
 - (B) Sewage disposal.
 - (C) Storage of water for augmentation of stream flow.
 - (D) Any combination of these purposes.
- (5) The proposed district proposes to cover and serve a proper area.
- (6) The proposed district can be established and operated in a manner compatible with established:
 - (A) districts;
 - (B) flood control projects;

- (C) reservoirs;
- (D) lakes;
- (E) drains;
- (F) levees;
- (G) regional water districts;
- (H) regional sewer districts; and
- (I) other water management or water supply projects.

(d) The fact that all the land included in the proposed district is owned by one (1) freeholder or a limited number of freeholders is not a sufficient reason for the commission or the court to make unfavorable findings on:

- (1) the question of the establishment of the district; and
- (2) later, if the district is established, the approval of the district plan.

However, it must appear from the evidence that the land is subdivided or intended for subdivision and development and that the accomplishment of the purposes proposed and in the manner proposed would be necessary and desirable for the person acquiring and using the land after subdivision and development.

As added by P.L.1-1995, SEC.26. Amended by P.L.170-2002, SEC.95.

IC 14-33-2-19

Commission's hearings to determine facts

Sec. 19. (a) In determining the facts, the commission shall hold hearings at which the commission shall give any interested person the right to be heard. At the request of an interested person, the commission shall hold hearings at the county seat of a county containing land in the proposed district. The commission shall choose the county seat.

(b) The commission shall give notice of the hearings by publication at least one (1) time in one (1) newspaper of general circulation in each county containing land in the proposed district.

As added by P.L.1-1995, SEC.26.

IC 14-33-2-20

Expenses

Sec. 20. The expenses of the hearings and other expenses of necessary investigations and surveys, together with any expense incurred by the commission in subsequent studies of district plans, are payable initially out of the general money of the commission. The district shall repay the expenditures, not to exceed thirty percent (30%) of the amount paid by the district to independent private engineers for the preparation of plans, to the commission from the district's planning money. Commission expenses include expenses incurred by an assisting or a cooperating state agency.

As added by P.L.1-1995, SEC.26.

IC 14-33-2-21

Purpose within jurisdiction of another agency

Sec. 21. (a) If a proposed purpose is within the administrative jurisdiction of another state agency, the commission shall request

technical assistance of the agency and give full weight to the agency in making a report to the court.

(b) State agencies shall furnish assistance to the commission necessary to accomplish the purposes of this article.

As added by P.L.1-1995, SEC.26.

IC 14-33-2-22

Report of commission's findings

Sec. 22. The commission shall make a report of the commission's findings to the court, including findings on the territorial limits of the proposed district. The commission shall make this report within one hundred twenty (120) days after the petition is referred to the commission, unless the commission requests and receives approval from the court for additional periods of thirty (30) days each.

As added by P.L.1-1995, SEC.26.

IC 14-33-2-23

Report as prima facie evidence of facts

Sec. 23. The factfinding report of the commission on the proposed district is prima facie evidence of the facts stated in the report in all subsequent proceedings.

As added by P.L.1-1995, SEC.26.

IC 14-33-2-24

Amendments to petition

Sec. 24. (a) The court may permit amendments to a petition to conform to the findings of the commission.

(b) If a petition is amended to include additional land other than the land published in the notice for hearing on the petition, the court may make a final determination on the establishment of the district only after there is published notice of the amendments or of motion to amend by the petitioners. In addition, the petitioners shall mail a notice of the amendments or of the motion to amend to all freeholders of the additional land according to section 14 of this chapter, including mailing of notice under section 12 of this chapter.

(c) If a petition is amended to include additional land:

(1) the requirements regarding signatures in sections 2 and 3 of this chapter must be satisfied as if the land had been included in the petition as originally filed; and

(2) the following may be filed with the court at any time before the conclusion of the hearing after the receipt of the commission's report:

(A) Additional signatures to the petition for the establishment of the district.

(B) Signatures to a petition against the establishment of a district.

(C) Withdrawals from either petition.

As added by P.L.1-1995, SEC.26.

IC 14-33-2-25

Court hearing; notice

Sec. 25. (a) Upon receipt of the commission's report, the court shall set a date for a hearing. The court shall give priority to this hearing in determining the date, but the court must allow at least twenty-one (21) days for interested persons, including petitioners, to file exceptions.

(b) The court shall order notice for this hearing as the court considers necessary, but at least one (1) publication must be made in one (1) newspaper of general circulation in each county having land in the proposed district.

As added by P.L.1-1995, SEC.26.

IC 14-33-2-26

Court's determination

Sec. 26. (a) If the court finds at the hearing that:

- (1) the only purpose of the district is water supply or sewage disposal, or both; and
- (2) the public health is not served immediately or prospectively by the establishment of the district;

the court shall dismiss the petition.

(b) If the court finds at the hearing that:

- (1) a purpose of the district is other than water supply or sewage disposal; and
- (2) the costs and damages incident to the establishment of the district will exceed the benefits received within the district;

the court shall dismiss the petition.

(c) If the court finds that the evidence does support the statements in a petition, the court shall order the district established for the purposes named in the petition.

(d) If the court finds that the evidence supports at least one (1) of the purposes named in a petition but does not support at least one (1) of the other purposes, the court shall order the district established only for the purposes the court finds supported by the evidence.

As added by P.L.1-1995, SEC.26.

IC 14-33-2-27

Order establishing district

Sec. 27. If the court orders a district established, the court shall in the order establishing the district determine the following:

- (1) The number of directors to serve on the board.
- (2) The division of the district into areas.
- (3) The time of the annual meeting of the district, which must be before March 1 each year.

As added by P.L.1-1995, SEC.26.

IC 14-33-2-28

Appeals

Sec. 28. An order:

- (1) dismissing a petition; or
- (2) establishing a district;

may be appealed to the supreme court within thirty (30) days.

As added by P.L.1-1995, SEC.26.

IC 14-33-2-29

Final order

Sec. 29. If:

- (1) a district is established by order of the court and an appeal is not taken within thirty (30) days; or
- (2) an order establishing a district is affirmed by the supreme court;

the establishment of the district is final and may not be directly or collaterally questioned in any action or proceeding.

As added by P.L.1-1995, SEC.26.

IC 14-33-2-30

New petition; filing

Sec. 30. If a petition is dismissed:

- (1) because the court finds the evidence does not support the petition according to section 26 of this chapter; or
- (2) according to section 15 of this chapter;

a new petition may not be addressed to any court to establish a district with essentially the same boundaries for any of the same purposes for two (2) years after the date of the order dismissing the petition. However, a petition dismissed for want of jurisdiction, including an insufficient number of signatures, may be refiled at any time after the correction of the jurisdictional defect.

As added by P.L.1-1995, SEC.26.